

MINUTES OF THE SOLID WASTE MANAGEMENT BOARD MEETING

Indiana Government Center South
402 West Washington Street
Conference Center Room A
Indianapolis, Indiana
May 16, 2006

The meeting was called to order by Mayor William Graham, Chairperson, at 1:30 p.m. Those present for all or part of the meeting were:

- Mr. Rick Dyar
- Mr. Kerry Stepter
- Dr. Lenore Tedesco
- Dr. Stephen Wintermeyer
- Mr. Howard Cundiff (Proxy, State Department of Health)
- Mr. Tom Hohman (Proxy, Department of Natural Resources)
- Ms. Pamela Fisher (Proxy, Indiana Economic Development Corporation)
- Ms. Deborah Albright, Board Counsel

A quorum was present.

In addition, the following IDEM staff members were present for all or part of the meeting:

- Mr. Mike Dalton, Chief, Rules, Planning and Outreach Section
- Mr. Steve Mojonier, Rules, Planning and Outreach Section
- Ms. Kiran Verma, Rules, Planning and Outreach Section
- Ms. Marjorie Samuel, Rules, Planning and Outreach Section
- Ms. Ann Long, Office of General Counsel
- Ms. Laura Steadham, Chief, Science Services Branch
- Ms. Sandra Flum, Director, Communications and Intergovernmental Relations
- Mr. Robert Moran, Toxicologist, Science Services Branch

APPROVAL OF MINUTES

Mayor Graham asked for additions or corrections to the minutes of the Solid Waste Management Board meeting of March 21, 2006. There being none, Mr. Howard Cundiff moved that the minutes be approved as presented. Mr. Kerry Stepter seconded. The motion passed unanimously.

IDEM REPORTS

Mayor Graham then invited Mr. Mike Dalton, Chief, Rules, Planning and Outreach Section, to address the Board. Mr. Dalton said that he was filling in for both Bruce Palin and Lynn West, who were absent due to family commitments.

Mr. Dalton referred to the latest rules project list and specifically commented on the following rules:

- a **#06-147 – New Rules Regarding Scoring Model at 329 IAC 7.1** – a new rulemaking to ensure that sites that are most potentially threatening to human health and the environment are scheduled for first response; reduce IDEM staff time regarding scoring a site; replace the Commissioner’s Bulletin with a more accurate status of cleanups. Mr. Louis McFadden will be the rulewriter.
- b **#06-125 – Inspection and Remediation of Property Contaminated by Chemicals Used in the Illegal Manufacture of a Controlled Substance Rule** – This rule, previously shown as LSA #05-182, is no longer under the Solid Waste Management Board for consideration. A decision by the Attorney General now places this rule under the Administrative Orders and Procedures Act, IC 4-22. The hearing to consider adoption is June 27, 2006, 1:30 p.m., Indiana Government Center South, Conference Center Room C. Mr. Dalton said that comments received during the previous comment period were all considered and changes had been made accordingly. He then asked if there were any questions on this rulemaking or additional comments. Other than a clarification on the location of the public hearing, there were no further comments. Please see pages 4 through 7 of the official transcript of this meeting for a verbatim account of Mr. Dalton’s remarks.

Mayor Graham said that the nonrule policy document (NPD), 78-0046, RISC, “RISK Integrated System of Closure, Technical Guide, Total Petroleum Hydrocarbons, (TPH)”, would be presented. Mayor Graham said that the NPD has been made available for a minimum of 60 days for inspection and comment. The NPD is also available for public inspection, comment and copying in the file room of the Department of Environmental Management, 12th Floor, Indiana Government Center North, Monday through Friday between the hours of 8:30 a.m. and 4:30 p.m. The NPD was presented by Mr. Robert Moran, Toxicologist, Science Services Branch, Office of Land Quality.

Mr. Moran first clarified that the NPD number W-0046 was the correct number. He said that the NPD was developed to determine health-based closure numbers for all the various compounds of petroleum fuels, referred to as total petroleum hydrocarbons (TPH’s). Current guidance numbers to attain are very low and difficult to achieve. IDEM commissioned a study to evaluate three programs that were working on health-based closure numbers. Mr. Moran said that after review of the three particular programs, a model was selected and a draft developed. Mr. Moran said that the draft was sent out for informal comment to focus groups, i.e., petroleum industry group, cleanup contractors, law firms. Changes were made based on the comments received and a final draft was developed that is the current NPD before the Board. Mr. Moran reviewed three additional, nonsubstantive changes that were made to the NPD. Mr. Moran said that the NPD is consistent with the whole RISC program. It establishes a default closure level for gasoline and diesel fuels based on commercial vs. residential exposure, surface or subsurface soils or ground water. Total petroleum hydrocarbon numbers are now more easily attained at many sites such as underground storage tanks at gasoline stations and brownfield programs that have been unable to achieve closure for TPH’s. Finally, Mr. Moran explained that there is a mechanism that allows for further in-depth evaluation if necessary. He also indicated that there should be some assistance in the state cleanup fund and the voluntary remediation programs as well. He then asked if there were any questions. For a verbatim account of Mr. Moran’s remarks, please see pages 7 through 18 of the official transcript of this meeting.

Dr. Tedesco asked for clarification regarding comments received and Mr. Moran indicated that the Board has received copies of all written comments.

Mayor Graham announced that there were two commentators to address the Board:

- a Kent Shadley, representing Alliance Environmental Group;
- b Maggie McShane, representing Indiana Petroleum Council.

Mr. Shadley opened his comments by reiterating his preference for rules rather than nonrule policy documents. He specifically had concerns about the current NPD because there would be a big increase in costs from laboratories sampling analyses. Mr. Shadley felt that the NPD was an attempt to “circumvent having a rule and having the economic analysis done”. He felt that there was a lack of a public comment period. Mr. Shadley also said he is confused about whether specific analytical methods in the NPD have to be used, because they are not in the rule. For a verbatim account of Mr. Shadley’s remarks, please see pages 20 through 26 of the official transcript of this meeting. Mr. Moran responded to Mr. Shadley’s remarks, noting that analytical costs will increase if higher, site-specific closure numbers were attempted.

Ms. Maggie McShane, Director, Indiana Petroleum Council, spoke next. She commented that while there have been concerns about the use of NPD’s rather than rules, she recognized the benefits of nonrule policy documents in many cases. She complimented Mr. Moran for his efforts to share the document in advance of the presentation. However, she did request an additional meeting about the NPD because of the complexity of the policy. Ms. McShane also echoed concern about additional costs, and the potential drain on the Excess Liability Trust Fund. She concluded her comments by requesting an additional meeting to work through some technical issues. Please see pages 27 through 34 of the official transcript of this meeting for a verbatim account of Ms. McShane’s remarks. Mr. Moran responded to Ms. McShane’s remarks, repeating that additional costs of sampling analysis would occur if the cleanup levels were changed. There were no further comments.

Mayor Graham introduced Ms. Sandra Flum, Director, Indiana Department of Environmental Management, Communications and Intergovernmental Relations, to present a legislative update.

- a **House Enrolled Act 110** – Mercury Switch Removal Bill – removal of mercury switches from vehicles prior to being recycled.
- b **House Enrolled Act 1117** – repeals unconstitutional statute regarding registering waste haulers to track out-of-state waste and treat it differently; repeal the Ground Waster Task Force.
- c **House Enrolled Act 1285, or Senate Enrolled Act 353** – authorizes the EQSC to study alternative fuels; create tax incentives to encourage the investment in and use of alternative fuels.
- d **Senate Enrolled Act 146** – removes the property transfer disclosure form from statute. IDEM is to update the form to match federal requirements, make it a state form with number assigned and available to those who are transacting properties.
- e **Senate Enrolled Act 234** – Environmental and Enforcement Bill – puts into statute the Indiana Environmental Stewardship Program. This program encourages entities to allocate resources toward environmental programs and provides incentive for companies to not only get into compliance with environmental regulations but to become proactive in environmental improvement. Also included in this bill is the requirement to have the EQSC address the issue of Indiana’s stringency with federal rules and regulations. Also included is a plan to shorten the adoption period of rules that deal with combined sewer overflows to 90 days. This issue concerns the Water Pollution Control Board, but is of interest to all the boards because of the unusual step the Legislature has taken to shorten the rule adoption process.

Please see pages 36 through 45 of the official transcript of this meeting for a complete account of Ms. Flum's presentation.

Mayor Graham asked if there was anyone who wished to address the Board on topics of interest and potential rulemakings in Title 329. There was no public comment.

ADJOURNMENT

Mayor Graham adjourned to meeting at 2:26 p.m.

The next meeting will be July 18, 2006, at 1:30 p.m., at the Indiana Government Center South, Conference Center Room A, 402 West Washington Street, Indianapolis, Indiana.

Technical Secretary